

STATE OF MICHIGAN
COURT OF APPEALS

GREENVIEW ASSOCIATES, LLC, MICHAEL
MOORE, JANICE MOORE, WILLIAM
GASTON, HEATHER GASTON, JAMES G.
CARR, EILEEN M. CARR, MARK
APPLEBERRY, and MAUREEN CARR,

UNPUBLISHED
March 10, 2009

Plaintiffs-Appellees,

v

WILLIAM C. PETTIS, DIANA L. PETTIS,
VERNON D. TIDWELL, and JOANNE M.
TIDWELL,

No. 279109
Manistee Circuit Court
LC No. LC No.03-0011200-CH

Defendants-Appellants.

Before: Sawyer, P.J., and Zahra and Shapiro, JJ.

PER CURIAM.

Defendants appeal as of right from the trial court's declaratory ruling regarding the location of property corner that is the subject of dispute. We affirm.

The parties in this case own adjacent properties that share a common border—the northern boundary of plaintiff's property is the southern boundary of defendants' property. Since 1839, when the Government Land Office (GLO) surveyed that area to set boundaries, several other surveys have taken place. From the evidence, it is unclear whether the original quarter corner by the GLO was ever witnessed or whether it has been lost or obliterated. A 1983 survey set the corner, which was later affirmed by the Manistee County Remonumentation Committee (Remon Committee). The trial court affirmed this location as the quarter corner.

Defendants argue that the trial court erred by failing to find that the quarter corner in question was never established. It relies on surveyor notes dating from 1871 in which the surveyor opines that the GLO had never surveyed or monumented the section line common to Sections 2 and 3, on which the quarter corner at issue lies. Based on these notes, defendants argue that the corner never existed and, therefore, cannot be treated as lost or obliterated and must be placed where the surveyor should have put it. Defendant rely on *Lugon v Crosier*, 78 Colo 141, 144; 270 P 462 (Colo, 1925), wherein the Colorado Supreme Court declined to apply the GLO rule of proportionate measurement for lost corners because it concluded that a nonexistent corner is neither lost nor obliterated. *Id.* However, only the 1871 surveyor notes

allude to the notion that no boundaries were set. The notes from a 1921 surveyor indicate that he located a stake and “upgraded the monument” at the location. Accordingly, the evidence that no GLO survey had ever been done was disputed and became a fact question for the trial court to determine.

It has long been held that there is a presumption that government surveyors and their surveys are accurate. *Barnsfield v Wallace*, 195 Mich 41, 47; 162 NW 73 (1917). In the present case, the trial court concluded that the fence line was the best evidence to determine the location of the lost corner. The trial court held that it is presumed that in the absence of evidence that government officials are not performing their duty, they are in fact performing their duty.

Additionally, when a plat of land is referenced on a deed as a part of the land description, that plat becomes essential to the description, and distances and measurements are controlled by natural or fixed marks. *McMurtry v Abbey*, 296 Mich 234, 238; 295 NW 268 (1941), citing *Clark on Surveying and Boundaries*, § 485. Here, deeds were conveyed not only to the plaintiffs, but also to uninvolved persons whose property, if the corner in question is relocated, would be moved south. The descriptions of the properties rely on the quarter corner. Following *McMurtry*, the trial court could have found that the corner was established because several other land descriptions had been established based on the location of the corner in question.

Given that the only evidence that no corner was set by the GLO was surveyor notes dating from 1871, and that the trial court’s decision is supported by Michigan precedent, we conclude that the trial court’s determination was not clearly erroneous. MCR 2.613(C); *Auto-Owners Ins Co v Harvey*, 219 Mich App 466, 469; 556 NW2d 517 (1996).

Defendants next argue that the trial court erred in using use and occupation to determine the location of the corner. We disagree.

According to the United States Bureau of Land Management pamphlet for Restoration of Lost or Obliterated Corners & Subdivision Sections:

An obliterated corner is one at whose point there are no remaining traces of the monument, or its accessories, but whose location has been perpetuated, or the point for which may be recovered beyond reasonable doubt, by the acts and testimony of the interested landowners, competent surveyors, or other qualified local authorities, or witnesses, or by some acceptable record evidence.

A lost corner is a point of a survey whose position cannot be determined, beyond reasonable doubt either from traces of the original marks or some acceptable evidence or testimony that bears upon the original position, and whose location can be restored only by reference to one or more interdependent corners.

What is actually in controversy is whether the corner had been lost or obliterated, because each has a different process for remonumenting a corner. Defendants argue that because the 1871 surveyor notes call into question whether a corner was ever set, there is reasonable doubt.

This argument ignores the additional comments contained in the pamphlet, which provides that a “[d]ecision that a corner is lost should not be made unless every means has been

exercised that might aid in identifying its true original position.” As is pointed out in criminal trials, beyond reasonable doubt does not mean beyond all doubt. Here, where there is evidence that buildings dating from 1910 appear in line with the quarter corner as established by the trial court, but would be on someone else’s property if the quarter corner were placed as defendants propose, and 1921 survey notes which indicate a corner was located, there is sufficient evidence to support the trial court finding that the placement of the quarter corner was, beyond a reasonable doubt, the location of the corner fence post. Given that a determination that a corner is lost appears to be one of last resort, we conclude that the trial court’s determination that the corner was obliterated was not clearly erroneous.

Because the trial court properly determined that the corner was obliterated, its reliance on use and occupation was appropriate. In *Daley v Gruber*, 361 Mich 358; 104 NW 807 (1960), the Michigan Supreme Court held that “long established occupational lines are not to be disturbed by recent surveys. *Id.* at 362 (internal quotation marks and citation omitted). In *Daley*, there was a fence line that was in existence for about 90 years that was in dispute, but had been relied upon to describe the properties in deeds. *Id.* at 363. Similarly, in the present case, there is a fence line that was in existence for at least 60 years that had been used as a property line, and the quarter corner had been utilized in additional deeds to describe other nearby properties.

“Public policy clearly favors consistency in ascertaining boundary lines, especially where, as here, a multitude of boundaries has been established in reliance upon the location of the [survey monument at issue in that case].” *Jonkers Summit Twp*, 278 Mich App 263, 267, quoting *Adams v Hoover*, 196 Mich App 646, 651; 493 NW2d 280 (1992). Both *Jonkers* and *Adams* relied on “the law as set forth by Justice Cooley more than 100 years ago” in *Diehl v Zanger*, 39 Mich 601 (1878) (Cooley, J., concurring):

Nothing is better understood than that few of our early plats will stand the test of a careful accurate survey without disclosing errors. This is as true of the government surveys as of any others, and if all the lines were not subject to correction on new surveys, the confusion of lines and titles that would follow would cause consternation in many communities. Indeed, the mischiefs that must follow would be simply incalculable, and the visitation of the surveyor might well be set down as a great public calamity. [*Id.* at 605.]

When it comes to land surveys, monuments control course and distance. *Id.* Surveyors should attempt to ascertain “the actual location of the original landmarks” and “if those were discovered they must govern.” *Id.* However, where “they are no longer discoverable, the question is where they were located; and upon that question the best possible evidence is usually to be found in the practical location of the lines” *Id.* Importantly, “[a]s between old boundary fences, and any survey made after the monuments have disappeared, the fences are by far the better evidence of what the lines of a lot actually are.” *Id.* at 605-606.

Under this standard, the trial court was correct in using the fence line as the property line, which in turn implied that the corner fence post was in fact the correct position of the quarter corner in question. There was no monument indicating where the quarter corner was located. Occupational evidence, in this case the fence line, was the best evidence that could be used to determine its location. If the trial court had found that the quarter corner should be set 50 feet south of the Remon Committee’s corner, where defendants contend it should be, other property

owners not directly involved in this litigation would be affected, creating the very “consternation” that Justice Cooley said that “no law can sanction.” *Id.* at 605.

Affirmed.

/s/ David H. Sawyer

/s/ Brian K. Zahra

/s/ Douglas B. Shapiro